



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 26, 2010

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
AND FACSIMILE AT 708-458-9990

Mr. Omar Ahmad
Chief Executive Officer
PlatinumTel Communications, LLC
8108 S. Roberts Road
Justice, Illinois 60458

Re: File No. EB-09-SE-185

Dear Mr. Ahmad:

This is an official **CITATION**, issued to PlatinumTel Communications, LLC (“PlatinumTel”), a reseller of wireless services, pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (“Act”),¹ for violating the digital wireless handset hearing aid compatibility status report filing requirements set forth in section 20.19(i)(1) of the Commission’s Rules (“Rules”),² and the public web site posting requirements set forth in section 20.19(h) of the Rules.³ As explained below, future violations of the Commission’s rules in this regard may subject PlatinumTel to monetary forfeitures.

In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.⁴ The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.⁵ The Commission further established, for each standard, deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface⁶ that are compliant with the relevant standard if they did not come under the *de minimis*

¹ 47 U.S.C. § 503(b)(5).

² 47 C.F.R. § 20.19(i)(1).

³ 47 C.F.R. § 20.19(h).

⁴ The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C). See *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16787 ¶ 89 (2003); Erratum, 18 FCC Rcd 18047 (2003) (“*Hearing Aid Compatibility Order*”); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005).

⁵ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1), (2).

⁶ The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN) and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

exception.⁷ In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility rules, the Commission released an order that, among other things, adopted new compatible handset deployment benchmarks beginning in 2008.⁸

Of primary relevance, the Commission also adopted reporting requirements to ensure that it could monitor the availability of these handsets and to provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets, including on the Internet.⁹ The Commission initially required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation (May 17, 2004, November 17, 2004, May 17, 2005, November 17, 2005, May 17, 2006 and November 17, 2006), and then annually thereafter through the fifth year of implementation (November 19, 2007 and November 17, 2008).¹⁰ In its 2008 *Hearing Aid Compatibility First Report and Order*, the Commission extended these reporting requirements with certain modifications on an open ended basis, beginning January 15, 2009.¹¹ The Commission also made clear that these reporting requirements apply to manufacturers and service providers that fit within the *de minimis* exception.¹² In addition, the Commission instituted a requirement that manufacturers and service providers with publicly-accessible web sites maintain a list of hearing aid-compatible handset models and certain information regarding those models on their web sites.¹³ The web site postings, which must be updated within 30 days of a change in a manufacturer's or service provider's offerings, will enable consumers to obtain up-to-date hearing aid compatibility information from their service providers.¹⁴

PlatinumTel, a reseller of wireless service, did not file a hearing aid compatibility status report prior to the January 15, 2009 deadline. The Wireless Telecommunications Bureau referred PlatinumTel's apparent violation of the hearing aid compatibility reporting requirement to the Enforcement Bureau for possible enforcement action. On November 23, 2009, the Enforcement Bureau's Spectrum Enforcement Division issued PlatinumTel a Letter of Inquiry ("LOI").¹⁵ PlatinumTel responded to the LOI on December 22, 2009.¹⁶ In its response, PlatinumTel states that it "has been using around 35 handsets that are TTY compatible," and that at any point in time a minimum of five hearing aid-compatible handsets

⁷ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. § 20.19(c), (d). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility deployment requirements, and manufacturers or mobile service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e).

⁸ See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008) ("*Hearing Aid Compatibility First Report and Order*"), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008).

⁹ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91.

¹⁰ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004).

¹¹ See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3445-46 ¶¶ 97-99.

¹² *Id.* ¶ 99.

¹³ *Id.* at 3450 ¶ 112.

¹⁴ *Id.*

¹⁵ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Omar Ahmad, CEO, PlatinumTel Communications, LLC (November 23, 2009).

¹⁶ See Letter, in form of an Affidavit, from Omar Ahmad, CEO, PlatinumTel Communications, LLC, to Katherine Power, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (December 18, 2009) ("LOI Response").

have been available to its customers.¹⁷ PlatinumTel states further that it “provides virtually all the products and services on a wholesale basis to dealers and distributors throughout the states,” and that “the direct contact with customers, the final users of these wireless services, is not (emphasis in original) with PlatinumTel, but rather with those dealers and distributors.”¹⁸ PlatinumTel claims that it therefore did not believe that it was required to be in compliance with digital wireless handset hearing aid compatibility status report filing requirements or the public web site posting requirements.¹⁹ It states that after receiving the LOI, it filed its January 15, 2009 report on December 18, 2009, and it is in the process of updating its web site to meet the requirements of Section 20.19(h).²⁰

A review of the PlatinumTel web site, however, indicates that PlatinumTel considers itself a Mobile Virtual Network Operator (“MVNO”), and that in addition to providing its products and services to dealers and distributors, it also clearly offers its handsets and services directly to consumers on its web site.²¹

We find that, as a reseller or MVNO, PlatinumTel is a service provider subject to the wireless hearing aid compatibility requirements. The Commission has made clear that the hearing aid compatibility requirements apply to service providers such as resellers and MVNOs.²² Thus, PlatinumTel is a service provider subject to the wireless hearing aid compatibility requirements.²³ Under section 20.19(i)(1) of the Rules, all service providers must file hearing aid compatibility status reports initially on January 15, 2009, and annually thereafter.²⁴ These reports are necessary to enable the Commission to perform its enforcement function and evaluate whether PlatinumTel is in compliance with Commission mandates that were adopted to facilitate the accessibility of hearing aid-compatible wireless handsets. These reports also provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets. Based on the record before us, we find that PlatinumTel did not timely file the January 15, 2009 report. Accordingly, PlatinumTel violated the hearing aid compatibility status report filing requirements set forth in section 20.19(i)(1) of the Rules.

Section 20.19(h) of the Rules requires that, beginning January 15, 2009, each manufacturer and service provider that operates a publicly-accessible web site make available on its web site a list of all hearing aid-compatible handset models currently offered, the ratings of those models, and an explanation of the rating system.²⁵ In addition, the Commission has stated that any changes to a manufacturer’s or service provider’s offerings must be reflected on its public web site listing within 30 days.²⁶ These web

¹⁷ LOI Response at 1.

¹⁸ *Id.*

¹⁹ LOI Response at 2.

²⁰ *Id.* We note that PlatinumTel timely filed its status report that was due January 15, 2010.

²¹ See www.platinumtel.com/support/faq (last visited Mar. 2, 2010). One of the “Frequently Asked Questions” listed on PlatinumTel’s web site is “How do I get PlatinumTel Prepaid Wireless Service?” According to the response, “You can either visit a PlatinumTel Authorized Retailer in your area, or you can purchase a prepaid cell phone from PlatinumTel’s Online Store.” *Id.* A review of the web site also demonstrated that it is possible to order prepaid cell phones and service plans directly from the web site. See www.platinumtel.com/phones.

²² See e.g., *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3424 ¶ 46 (concluding that a three-month extension of deadlines for meeting the handset deployment benchmarks is appropriate with regard to “service providers that are not Tier I nationwide providers, including regional and smaller providers, such as Tier II and Tier III carriers, and other service providers such as resellers and MVNOs.”).

²³ See *7-Eleven, Inc.*, Citation, DA 10-85 (Enf. Bur., Spectrum Enf. Div., released January 14, 2010).

²⁴ 47 C.F.R. § 20.19(i)(1).

²⁵ 47 C.F.R. § 20.19(h).

²⁶ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3450 ¶ 112.

site postings provide consumers up-to-date hearing aid compatibility information. Based on our review of PlatinumTel's web site, and the record before us, it failed to post the required information on its web site in violation of section 20.19(h) of the Rules.²⁷

PlatinumTel should take prompt action to ensure that it does not continue to violate the Commission's wireless hearing aid compatibility rules. If, after receipt of this citation, PlatinumTel violates the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$150,000 for each such violation or each day of a continuing violation.²⁸

PlatinumTel may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. PlatinumTel's response should specify the actions that it is taking to ensure that it does not violate the Commission's rules governing the filing of hearing aid compatibility status reports in the future.

The nearest Commission field office appears to be the Chicago Field Office, in Park Ridge, Illinois. Please call Katherine Power at 202-418-0919, if PlatinumTel wishes to schedule a personal interview. PlatinumTel should schedule any interview to take place within 30 days of the date of this letter. PlatinumTel should send any written statement within 30 days of the date of this letter to:

Katherine Power
Spectrum Enforcement Division
Enforcement Bureau
Re: EB-09-SE-185
Federal Communications Commission
445 12th Street, S.W., Rm. 3-A365
Washington, D.C. 20554

Under the Privacy Act of 1974,²⁹ we are informing PlatinumTel that the Commission's staff will use all relevant material information before it, including information that PlatinumTel discloses in its interview or written statement, to determine what, if any, enforcement action is required to ensure PlatinumTel's compliance with the Communications Act and the Commission's rules.

The knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment.³⁰

We thank PlatinumTel in advance for its anticipated cooperation.

Sincerely,

Kathryn Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁷ As of March 2, 2010, PlatinumTel's web site did not evidence compliance with section 20.19(h) of the Rules.

²⁸ See 47 C.F.R. § 1.80(b)(3).

²⁹ See 5 U.S.C. § 552(a)(e)(3).

³⁰ See 18 U.S.C. § 1001.